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RECORD NO. 87-1760

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1987

DIANA M. PERKINSON AND FRANK N. PERKINSON, JR., t/a PERKINSON & PERKINSON, A PARTNERSHIP

Petitioners

v.

DONALD W. HUFFMAN, TRUSTEE FOR BILLY H. HARBOUR, DEBTOR; AND BLUEFIELD HOLDING COMPANY

Respondents

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

Respondents submit these questions to this Court:

I. ARE DEFENDANTS WHO HAVE RECEIVED TRANSFERS OF MONEY OR PROPERTY FROM A DEBTOR OR FROM AN ASSET OF THE DEBTOR'S BANKRUPTCY ESTATE ENTITLED TO TRIAL BY JURY WHEN SUED BY THE BANKRUPTCY TRUSTEE TO RECOVER FOR THE BANKRUPTCY ESTATE THOSE TRANSFERS?

II. SHOULD ARTICLE III JUDGES BE REQUIRED TO REMOVE ACTION FROM BANKRUPTCY JUDGES WHEN SUCH ACTIONS ARE "CORE" PROCEEDINGS IN THE CONGRESSIONAL BANKRUPTCY SCHEME?

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In the matter of Silver Mill Frozen Foods, Inc. 80 B.R. 848 (B.C. W.D. Mich. 1987)	10, 11

STATEMENT REGARDING THE OPINIONS BELOW AND THE COURT'S JURISDICTION

Petitioners have attached the opinion of Judge Sprouse from the 4th Circuit Court of Appeals as an appendix to their petition. Respondent incorporates Petitioners' appendix as if restated in full herein.

While Respondent may disagree with the conclusions drawn and stated by Petitioners in their "Statement of Grounds to Invoke Jurisdiction", Respondent is aware that this Court may grant a writ before a final judgment is entered. Therefore, Respondents do not challenge Petitioners' statements contained in their Section V.

CONSTITUTIONAL AND

STATUTORY PROVISIONS INVOLVED

Respondent incorporates Petitioners' Constitutional and Statutory provisions involved.

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STATEMENT OF THE CASE

Respondent concurs with Petitioner's statement of the case, but would submit a clarification regarding Bluefield Holding Company. Bluefield Holding Company was wholly owned by Billy H. Harbour, the Debtor. As such it is an asset of the bankruptcy estate and under the supervision of the Bankruptcy Court.

ARGUMENT

I. PETITIONERS HAVE NOT STATED GROUNDS WHICH JUSTIFY THE GRANTING OF A WRIT OF CERTIORARI.

Petitioners have requested a Writ of Certiorari on several proposed grounds. Petitioners assert that the right to a jury trial in their case is mandated by the United States Constitution, and that the lower Courts' denial of this asserted right conflicts with the decisions of the Supreme Court.

Petitioners fail to identify any conflicts between appellate courts but do cite one bankruptcy court case which gives a similarly-situated Defendant such a right. The Petitioners have also asserted that this matter should be heard by an Article III Judge because they "contend the proceeding is not a 'core' proceeding . . ."

A. PETITIONERS HAVE FAILED TO SHOW A CONFLICT WITH OTHER DECISIONS REQUIRING THEIR CASES TO BE HEARD BY AN ARTICLE III JUDGE.

Petitioners have shown no conflict with other circuits, or prior decisions of this Court, as to the issue of whether the Trustee's action must be heard by an Article III Judge. In fact, Petitioners assertion that the suits brought by the Trustee are not core proceedings ignores the plain language of 28 U.S.C. § 157(b)(1). Nor have the Petitioners challenged the constitution-

ality of 28 U.S.C. § 157 and the Congressional grant of jurisdiction to Bankruptcy Courts. Since the Petitioners have not shown that there is a conflict with other appellate courts, that this question is sufficiently important for Supreme Court review, or that the decision below calls for an exercise of the Supreme Court's supervisory powers, the petition should be denied.

B. PETITIONERS HAVE FAILED TO SHOW A CONFLICT WITH OTHER DECISIONS PERMITTING A RIGHT TO A JURY TRIAL IN THEIR CASES.

Petitioners' primary claim revolves around the assertion that actions to avoid preferential transfers and to rescind fraudulent conveyances are really actions at law. As such, a Fifth Amendment right to a jury trial would attach. Petitioners also assert that the attachment of this right is mandated by decisions of this Court, specifically

Schoenthal v. Irving Trust Company, 287 U.S. 92 (1932) ("Schoenthal"), and Northern Pipeline Company v. Marathon Pipeline, 458 U.S. 50 (1981) ("Northern Pipeline").

Bankruptcy Courts are traditionally considered Courts of equity. See Katchen v. Landy, 382 U.S. 323, at 327, (1966) and Curtis v. Loether, 415 U.S. 189, at 195 (1974). Jurisdiction to hear the actions brought by the Trustee in this case is conferred by statute. See 28 U.S.C. § 157. Congress obviously intended the Bankruptcy Courts to have the power to hear and decide matters surrounding the Debtor and his estate, including administrative matters and questions between the estate and its creditors. See Katchen, 382 U.S. at 327.

Petitioners rely on Supreme Court cases decided prior to the Bankruptcy Amendments and Federal Judgeship Act of

1984 ("1984 Act") and fail to point to any Courts of Appeal decisions which support their position. Since the passage of the 1984 Act, and in harmony with decisions of this Court, the weight of authority in Bankruptcy Courts in other districts is that there is no right to a jury trial in core proceedings brought in the Bankruptcy Court. See In re Chase & Sanborn Corp., 54 B.R. 43 at 44 (B.C. S.D. Fla. 1985); In re Reda, Inc., 60 B.R. 178 at 180-181 (B.C. N.D. Ill. 1986). In the one case cited by Petitioners, In the matter of Silver Mill Frozen Foods, Inc., 80 B.R. 848 (1987), the Judge reached the anomalous conclusion that Defendants who have filed proofs of claim are not entitled to jury trials while Defendants who have not filed proofs of claim are entitled to jury trials. Judge Howard, in reaching his decision, stated "A

Court, however, cannot ignore clear precedents merely because those precedents do not comport with the Court's common sense." In the matter of Silver Mill Frozen Foods, Inc., 80 B.R. at 854.

The Courts below examined the same precedents as Judge Howard but failed to see the "clear precedents" referred to in Judge Howard's opinion. The Courts below have correctly interpreted the precedents and in so doing have reached the correct decision.

While there may be some conflict between Bankruptcy Courts, Petitioners have failed to point to any conflicts between Federal Court of Appeal. The asserted conflict with prior decisions of this Court ignores the reasoning of Congress' enactments and the plain language of cases cited, such as Katchen, at 328.

II. TO MODIFY THE DECISION BELOW WOULD DISMEMBER THE STATUTORY BANKRUPTCY SCHEME.

To overturn the ruling below would create confusion and chaos within the bankruptcy system. Bankruptcy Courts would no longer be forums for the summary adjudication of matters relating to a bankruptcy estate. Nor would debtors be able to have their disputes with creditors quickly and fairly decided. Issues would be subjected to lengthy trials, before juries, with little or no concept of the statutory mandates. Bankruptcy cases would be left open and on the docket for a longer period of time, thus further burdening the already overloaded Bankruptcy Court system. "The expeditious and cost effective administration of the bankruptcy courts would become jeopardized if routine preference actions such as this one would

necessitate jury trials. See In re Reda, supra at 180, N.7, citing In re Best Pack Seafood, Inc., 45 B.R. 194, at 195 (B.R. D. Me. 1984).

Judge Sprouse's well reasoned opinion below accurately and correctly considered these factors. While he did not specifically so state, it is clear from the opinion that the Court below feels that a different decision would have the effect of dismembering the statutory scheme of the Bankruptcy Amendments and Federal Judgeship Act of 1984. See Curtis, at 195, citing Katchen, at 339.

CONCLUSIONS

Petitioners have failed to establish sufficient reasons for this Court to grant a Writ of Certiorari. The Court below has fully and fairly considered the issues and has returned a decision in harmony with prior decisions

of this Court. The petition should further be denied because to overturn the lower Courts' decisions would dismember Congress' bankruptcy scheme as well as propagate confusing, chaotic, and anomalous results within the bankruptcy scheme.

Respectfully submitted,

DONALD W. HUFFMAN,
TRUSTEE FOR BILLY H.
HARBOUR, DEBTOR; AND
BLUEFIELD HOLDING COMPANY

BY
Their Counsel

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PROOF OF FILING AND SERVICES

I, Donald W. Huffman, counsel for the Respondents and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the

20th day of May, 1988, I filed the foregoing petition for writ of certiorari with the Clerk of the Supreme Court of the United States by mailing forty copies of same in a duly addressed envelope by Federal Express with postage thereon prepaid addressed to Joseph F. Spaniol, Jr., Clerk, Supreme Court of the United States, 1 First Street, Northeast, Room 30, Washington, D.C. 20543; and I also served a true copy of the foregoing petition on the Petitioners by mailing three copies of same in a duly addressed envelope by first class mail with postage thereon prepaid addressed to John H. Kennett, Jr., Esquire, 133 Kirk Avenue, S.W., Roanoke, Virginia 24011.

Counsel for Respondents

STATE OF VIRGINIA,

CITY OF ROANOKE, TO-WIT:

The foregoing proof of filing and service was subscribed and sworn to before me by Donald W. Huffman this 20 day of May, 1988.

My commission expires: 9/10/91

Sherri Casdorph
Notary Public